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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,260	03/26/2001	Nicholas J. Schork	G-085US04CON	9223

23557 7590 05/15/2007
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EXAMINER

LIN, JERRY

ART UNIT	PAPER NUMBER
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1631

MAIL DATE	DELIVERY MODE
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05/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/818,260

Applicant(s)

SCHORK ET AL.

Examiner

Jerry Lin

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,4,7,40,41 and 46-50.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Applicants' proposed After Final Amendments to the claims introduce substantive changes that raise issues that require further search and/or consideration and therefore will not be entered. Claims 4, 46, 47, were amended to include an additional input device to the claimed system. This new limitation would require further consideration and/or search.

The instant claims remain rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1, 40, 41, and 50, the Applicant have stated that in the instant claims require creating data and that if a claimed process creates data that will be preformed in a process representing a practical application the claimed process is statutory. However, it is noted, in the citation by the Applicants, that the process must still represent a practical application. Since there is no physical transformation, the Examiner determines if there is a practical application by determining if there is a useful, concrete, and tangible final result. In the instant claims, there is not a tangible final result. The last step of the claims only indicates that some additional analysis is occurring. It does not necessarily lead to some final result. Thus the instant claims do not have a tangible result. Since the claims do not have a tangible result, the instant claims are not drawn to a practical application of a mathematical algorithm.

Regarding claims 7, 48, and 49, the Applicants state that the instant claims are drawn to a programmed storage device. Furthermore, the Applicants state that a programmed storage device is defined as any computer readable media on which a program readable by a computer has been stored. However, as the Examiner note previously, the Specification, on page 16, states that computer readable media includes propagated data signals. Thus instant claims 7, 48, and 49 include embodiments drawn to propagated data signals. According to the MPEP §2106.01, data signals are non-statutory per se.

Regarding claims 4, 46, and 47, the Applicants state the instant claims are drawn to any type of electronically connected group of computers. A process embodied on a computer must still have a practical application. As stated above, the claimed process does not have a practical application. Thus, although the process is embodied on a computer, the instant claims are still non-statutory.

This rejection is maintained from the previous office action.



John S. Brusca 10 May 2007
JOHN S. BRUSCA, PH.D
PRIMARY EXAMINER